

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

Criminal Jail Appeal No.D-02 of 2025

Before;

Mr. Justice Riazat Ali Sahar;

Mr. Justice Ali Haider 'Ada'.

Appellant : Shahid Hussain, son of Faqeer
Muhammad Katohar, *through* Mr.
Javed Ahmed Soomro, Advocate.

The State : *Through* Mr. Nazir Ahmed Bangwar,
Deputy Prosecutor General Sindh.

Date of Hearing : 10.06.2026.
Date of Judgment : 22 .06.2026.

J U D G M E N T

ALI HAIDER 'ADA', J.- Through the instant criminal jail appeal, the appellant has called in question the judgment dated 18.01.2025 passed by the learned Sessions Judge/Special Judge (CNSA), Jacobabad, in Special Narcotics Case No.127 of 2023, titled *The State v. Shahid Hussain*, arising out of FIR No.02 of 2023, registered for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997. By the impugned judgment, the appellant was convicted and sentenced to suffer rigorous imprisonment for twenty (20) years and to pay a fine of Rs.800,000/-, and in default whereof to undergo simple imprisonment for a further period of four (04) months. The benefit of Section 382-B, Cr.P.C. was extended to him. Being dissatisfied with the said judgment, the appellant has preferred the instant appeal.

2. Briefly stated, the prosecution case is that on 17.11.2023 at about 5:00 p.m., a party of Excise Police, during routine patrol, intercepted a motorcycle bearing Registration No. SMZ-4044. Upon search of the motorcycle, the police allegedly recovered 10 kilograms

of charas packed in twenty slabs concealed in a black shopper. After completing the requisite legal formalities, the complainant lodged the subject FIR against the appellant.

3. After registration of the FIR, the usual investigation was carried out and upon completion thereof the appellant was sent up to face trial. The learned trial Court took cognizance of the matter, supplied copies of relevant documents to the appellant in compliance with Section 265-C, Cr.P.C, and thereafter framed charge on 10.01.2024, to which the appellant pleaded not guilty and claimed trial.

4. In order to substantiate the charge, the prosecution examined complainant Excise Inspector Zulfiqar Ali, who produced and exhibited the memo of arrest and recovery, copy of FIR, relevant roznamcha entries, memo of place of incident, letter addressed to the Chemical Examiner, motorcycle verification letter along with its report, and the report of the Chemical Examiner. The prosecution further examined mashir/witness Mir Gyand. Thereafter, the prosecution closed its side.

5. The statement of the appellant under Section 342, Cr.P.C. was subsequently recorded, wherein he professed his innocence, denied the allegations levelled against him and claimed false implication in the case. Upon conclusion of the trial and after hearing the learned counsel for the parties, the learned trial Court convicted and sentenced the appellant through the impugned judgment, which is now under challenge before this Court.

6. Learned counsel for the appellant contended that the prosecution has failed to establish its case beyond reasonable doubt. According to him, the prosecution has not proved the safe custody and safe transmission of the alleged narcotics from the place of recovery till their receipt by the office of the Chemical Examiner. He

further argued that the place of occurrence was a thickly populated area, yet no independent witness from the locality was associated with the recovery proceedings. Learned counsel also emphasized that neither Register No.19 of the Malkhana was produced in evidence nor was the Moharrir/Malkhana In-charge examined to establish the safe custody of the case property. On these grounds, he prayed for acquittal of the appellant. He placed reliance upon the cases as reported in 2025 SCMR 923, 2026 SCMR 224, 2024 SCMR 1408, 2023 SCMR 1144 and 2023 SCMR 1009.

7. Conversely, learned Deputy Prosecutor General supported the impugned judgment and submitted that a huge quantity of narcotics was recovered from the possession of the appellant, leaving no possibility of false implication or foisting of narcotics upon him. He argued that the prosecution has successfully proved its case and that the learned trial Court has rightly convicted and sentenced the appellant.

8. Heard and have carefully examined the evidence and material available on the record.

9. Upon an **independent appraisal of the evidence** available on record, we are of the considered view that the prosecution has failed to establish reasonable grounds for believing that the appellant is guilty of the offence charged. Rather, the record reveals serious infirmities and procedural irregularities which cast substantial doubt upon the veracity of the prosecution case.

10. At the outset, it is noteworthy that the complainant himself assumed the role of the Investigating Officer and conducted the investigation of the case. Although there is no absolute legal prohibition against a complainant acting as an Investigating Officer, yet the settled principle of criminal jurisprudence demands that investigation must be fair, impartial and free from any likelihood of

bias. The purpose of investigation is to unearth the truth and not merely to secure a conviction. Therefore, where the complainant himself investigates the case, the possibility of prejudice cannot be lightly ignored and such practice has consistently been viewed with disfavor by the superior Courts. In *Ashiq alias Kaloo v. The State* (1989 PCr.LJ 601 FSC), it was observed that a fair and impartial investigation is an essential requirement of criminal justice and any circumstance creating doubt regarding the neutrality of the investigation adversely affects the prosecution case. Similar views were expressed in *Zeenat Ali v. The State* (2021 PCr.LJ 1294), *Javed Akhtar v. The State* (1998 PCr.LJ 1462), *Nazeer Ahmed v. The State* (PLD 2009 Karachi 191), *Agha Qais v. The State* (2009 PCr.LJ 1334), *Ahmed Shah and another v. The State* (2020 YLR 1715), and *Javaid Khan v. The State* (2024 YLR 1611), wherein the Courts emphasized the necessity of maintaining transparency and impartiality during investigation and deprecated the practice of the complainant simultaneously acting as the Investigating Officer. The Honourable Supreme Court of Pakistan in *The State v. Bashir and others* (PLD 1997 SC 408) held that:

Then, .reference may be made to the Police Rules, 1934. Chapter XXV of the Police Rules relates to Investigation. Para. 3 of the Rule 25.2 in Chapter XXV reads asunder:--,

"3. It is the duty of an Investigating Officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."

It could hardly be expected that a police officer, who is heading a raiding party and is a witness, also becomes the complainant and loges an F.I.R. against the accused, and then becoming an Investigating Officer of the same case, will comply with the aforesaid Police Rule. In the circumstances, the practice of the seizing officer or the head of a police party who is also a witness to the crime becoming or being nominated as an Investigating Officer of the same case should be avoided and if any other competent officer is available in

the police station, he may be nominated as the Investigating Officer rather than the head of the Police Party. As observed, Investigating Officer is an important witness for the defence also and in, case the head of the police party also becomes the Investigating Officer he may not be able to discharge his duties as required of him under the Police Rules.

In case of ***Fahad vs The State (2022 PCr.L.J 279 DB-Sindh)***, as held that:

10. It is also pertinent to mention here that in this case complainant/ SIP Muhammad Khan had not only lodged FIR. But also conducted investigation of the case himself as well as he himself took the case property for Chemical Examination. In our view it is/was not appropriate that the person who is complainant of a case could investigate the same case and took the narcotic item for report because in order to keep all fairness of thing the rule of propriety demands that it must be investigated by an independent officer but not by the complainant himself.

Further reliance is placed upon the judgment in ***Taj Wali and 6 others vs The State (PLD 2005 Karachi 128)***, wherein this Court held that:

27. The practice of complainant being also an Investigating Officer is increasing day by day, which should be stopped immediately. The investigation should be conducted by entrusting the same to any other police official preferably to a superior officer to that of the designation of the complainant. In this way, a check can be placed on manipulation of the evidence by the complainant against an innocent person, which is very essential in the present day's time, when we receive complaints of false involvement of the accused persons due to some personal animosity with the police or releasing the real culprits because of various reasons. Thus it is high time that a check should be placed on the activities of the police officials who are themselves becoming complainants, witnesses and Investigating Officers. Under these circumstances we direct the Director General ANF, I.G. Police, Secretary Excise and Taxation and other concerned officers of other agencies who are involved in the investigation of those types of cases to issue a direction to their subordinates who are detecting the cases that they should not act as Investigating Officers and after detecting the cases, the investigation of the cases should be entrusted to a superior officer of the complainant. In this way the grievance of the accused persons would be redressed as arguments are being

advanced before us that had the investigation been conducted by any other superior police official then the true facts could have been brought on the record and the false involvement of the accused persons could have been checked at the very initial stage of investigation. This will also ensure fair play between the parties.

11. Furthermore, a careful examination of the record reveals another serious deficiency in the prosecution case regarding the safe custody of the alleged narcotics. The prosecution has failed to establish that the recovered contraband was ever deposited in a properly maintained Malkhana or store room under the supervision of a designated official. Neither has any evidence been brought on record to show the existence of a Malkhana at the relevant Excise Police Station nor has any documentary proof been produced to demonstrate the safe keeping of the case property from the time of its alleged recovery until its transmission to the office of the Chemical Examiner. Such omission assumes significance because the possibility of tampering, substitution or manipulation of the case property cannot be excluded unless the prosecution affirmatively proves that the recovered substance remained in safe and secure custody throughout. In this regard, **Rule 22.70 of the Police Rules, 1934**, provides a complete mechanism regarding the custody and maintenance of case property and other articles deposited with the police. The said rule contemplates proper preservation of the recovered articles in the Malkhana under the supervision of the officer responsible for such custody so as to ensure their integrity and prevent any possibility of tampering. For ready reference, Rule 22.70 of the Police Rules, 1934 is reproduced hereunder:

22-70. Register No.XIX.- This register shall be maintained in Form 22.70 with the exception of articles already included in register No.XVI every article placed in the store-room shall be entered in this register and the removal of any such article shall be noted in the appropriate column.

12. So far as the safe custody and safe transmission of the alleged narcotics are concerned, the record reveals that the recovery was allegedly effected and the FIR was registered on 17.11.2023, whereas the case property was transmitted to the office of the Chemical Examiner on 20.11.2023. The prosecution has failed to furnish any plausible explanation regarding the custody of the recovered contraband during the intervening period. There is no evidence on record to show as to where the case property remained stored, under whose supervision it was kept, and what measures were adopted to ensure its safety and integrity before its dispatch for chemical examination. Moreover, neither the relevant Malkhana record/Register No.19 has been produced nor has any official responsible for the custody of the case property been examined by the prosecution. In the absence of such evidence, the prosecution has failed to establish an unbroken chain of custody connecting the alleged recovery with the report of the Chemical Examiner. Consequently, the possibility of tampering, substitution or manipulation of the case property cannot safely be ruled out. Guidance in this regard may be sought from the judgments of the Honourable Supreme Court in *Muhammad Iqbal v. The State* (2025 SCMR 704), *Abdul Haq v. The State* (2025 SCMR 751), *Asif Ali and another v. The State* (2024 SCMR 1408), *Javed Iqbal v. The State* (2023 SCMR 139), *Qaiser Khan v. The State* (2021 SCMR 363), *Mst. Sakina Ramzan v. The State* (2021 SCMR 451), and *Zubair Khan v. The State* (2021 SCMR 492).

13. Furthermore, another aspect of the case which adversely affects the prosecution version is the non-association of any independent witness despite the alleged recovery having been effected at a place admittedly situated on a busy road and within a populated area. The prosecution witnesses themselves conceded that the place of occurrence was frequented by members of the public and that movement of persons in the vicinity was normal at

the relevant time. Although it is true that conviction can legally be based upon the testimony of official witnesses alone, yet where independent witnesses are readily available and no effort is made to associate them, the Court is required to examine the prosecution evidence with greater caution. The unexplained failure to secure independent corroboration in such circumstances creates a dent in the prosecution case and diminishes the evidentiary value of the recovery proceedings. In this regard, reliance may be placed upon *Muhammad Aslam v. The State* (2011 SCMR 820). Similar principles were reiterated in *Ghulam Shabbir and another v. The State* (2023 YLR 153). Likewise, this Court in *Arshad Ali and another v. The State* (2024 PCr.LJ 1183) [Sindh-DB], as well as in *Shahzaib alias Wadero Feroze v. The State* (2024 YLR 1298) [Sindh-DB], emphasized that where recovery proceedings are conducted at public places and no independent witness is associated despite availability, such circumstance constitutes a factor creating doubt in the prosecution case. Similar views were expressed in *Danish v. The State* (2025 YLR 1355) and *Mir Muhammad and others v. The State* (2024 PCr.LJ 370).

14. Additionally, the description and condition of the case property produced before the learned trial Court also create a serious dent in the prosecution case. The record reflects that when the alleged recovered bags were produced during trial, certain markings and inscriptions were found thereon, including the word "Guvecsn" and the name "Raza Shah" written in Urdu on each packet. Surprisingly, neither the recovery memo nor any other document prepared at the time of the alleged recovery contains any reference to such markings or inscriptions. The absence of any mention of these inscriptions in the relevant documents creates a serious discrepancy regarding the identity of the case property allegedly recovered from the possession of the appellant. It is a settled principle of law that the prosecution is under a legal

obligation to establish beyond reasonable doubt that the case property produced before the Court is the very same property allegedly recovered from the accused. Any discrepancy regarding the description, markings, seals, packing or identity of the case property strikes at the root of the prosecution case and renders the alleged recovery doubtful. Guidance in this regard may be sought from *Bahawal Shaikh v. The State* (2025 MLD 840), *Muhammad Arif v. The State* (2023 YLR 2369), *Ahsan Marfanii v. The State* (2022 YLR Note 5), and *Asif Khan v. The State* (2021 MLD 1192).

15. Moreover, the prosecution case suffers from yet another material deficiency relating to the motorcycle allegedly used by the appellant at the time of the recovery. The prosecution produced a verification report about a motorcycle bearing Registration No. SMZ-4044; however, the said report reveals that the registered owner of the motorcycle was a person other than the present appellant. Despite this significant circumstance, the prosecution neither associated the registered owner of the motorcycle with the investigation nor recorded his statement to ascertain how the motorcycle allegedly came into the possession of the appellant. No effort appears to have been made to establish the chain of ownership, possession or control of the motorcycle. Consequently, the prosecution failed to explain the nexus between the appellant and the vehicle allegedly carrying the contraband. In the present case, the registered owner of the motorcycle remained completely unexplored during the investigation. Neither was he examined as a witness nor was any documentary or oral evidence produced to establish that the appellant was lawfully or unlawfully using the said motorcycle at the relevant time. The failure of the prosecution to investigate this important aspect of the matter renders the alleged recovery proceedings further doubtful. Guidance in this regard may be sought from *Jeehand v. The State* (2025 SCMR 923).

16. The prosecution's reliance on the chemical report in the present case is gravely misplaced, as it fails to meet the requisite evidentiary standard for establishing the presence of narcotics beyond reasonable doubt. The report indicates that the test applied was the Fast Blue Salt test, which, by all standards, is merely a presumptive test, a preliminary screening tool that can suggest the presence of certain controlled substances. According to the guidelines issued by the United Nations Office on Drugs and Crime (UNODC), the proper procedure for narcotic substance analysis involves two distinct stages: presumptive tests, which are initial, rapid tests to indicate the possible presence of narcotic substances, and confirmatory Tests; these are scientifically advanced and accurate techniques required to legally establish the nature and identity of the substance beyond any doubt. The UNODC guidelines explicitly categorize confirmatory methods as chromatographic techniques, such as: Gas Chromatography (GC), High Performance Liquid Chromatography (HPLC), and Gas Chromatography-Mass Spectrometry (GC/MS). This deficiency in applying a valid confirmatory test strikes at the root of the prosecution's case, as the chemical report is a key piece of evidence for proving the offence under the Control of Narcotic Substances Act. The absence of GC, HPLC, or GC/MS testing renders the chemical report inconclusive and legally unreliable. In this regard, reliance is placed on the judgment in **The State v. Imam Bakhsh (2018 SCMR 2039)**; similarly, in **Najeeb Ullah and another v. The State (2025 YLR 1170)**. In light of the above, the chemical examination report in the instant matter is grossly insufficient to sustain conviction, and the accused is entitled to benefit of doubt as per settled principles of criminal jurisprudence.

17. For the foregoing reasons, we are of the considered view that the prosecution has failed to establish its case against the appellant beyond reasonable doubt. The evidence brought on record suffers

from material contradictions, procedural irregularities and missing links, which have rendered the prosecution story highly doubtful. It is a cardinal principle of criminal jurisprudence that the prosecution must stand on its own legs and prove its case beyond reasonable doubt. It is equally well settled that even a single circumstance creating reasonable doubt in a prudent mind regarding the guilt of an accused is sufficient to entitle him to the benefit thereof, not as a matter of grace but as a matter of right. In this regard, reliance is placed upon *Ahmed Ali v. The State (2023 SCMR 781)*.

18. Consequently, the instant criminal jail appeal is allowed. The judgment dated 18.01.2025 passed by the learned Sessions Judge/Special Judge (CNSA), Jacobabad, in Special Narcotics Case No.127 of 2023, arising out of Crime No.02 of 2023 registered at Police Station Excise, Jacobabad, is hereby set aside. As a result, the appellant, namely Shahid Hussain son of Faqeer Muhammad Katohar, is acquitted of the charge under Section 9(c) of the Control of Narcotic Substances Act, 1997. The appellant shall be released forthwith, if not required to be detained in any other case.

JUDGE

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